

**RIVERVIEW ORCHARDS, BLOCK 5, LOT 1-A, AP (SCHULTZ CONSTRUCTION, INC.)  
TWO-LOT SUBSEQUENT MINOR SUBDIVISION AND THREE VARIANCE REQUESTS**

**STAFF REPORT FOR THE PLANNING BOARD**

**CASE PLANNER:** Shaun Morrell

**REVIEWED/  
APPROVED BY:** Renee Van Hoven

**PUBLIC HEARINGS/  
MEETINGS:**

Planning Board Plat Evaluation:	N/A*
Planning Board Public Hearing:	6:00 p.m. January 17, 2007
BCC Public Meeting:	9:00 a.m. February 8, 2007
Deadline for BCC action (35 working days):	February 16, 2007

\* Waiver request was approved by the Planning Department and President of the Planning Board

**SUBDIVIDER/OWNER:** Schultz Construction, Inc.  
849 Middle Burnt Fork Road  
Stevensville, MT 59870

**REPRESENTATIVE:** Gordon Sorenson Engineering  
2610 Gunsight Ct.  
Missoula, MT 59804

**LOCATION OF REQUEST:** The property is located northeast of Florence off Skyview Drive and Longview Drive. (See Map 1)



**Map 1: Location Map**  
(Source Data: Ravalli County Planning Department)

**LEGAL DESCRIPTION  
OF PROPERTY:**

SE4 SE4 Section 5, NE4 NE4 Section 8 and NW4 NW4 Section 9,  
T10N, R19W, P.M.M.

**APPLICATION  
INFORMATION:**

The subdivision and variance applications were determined complete on December 27, 2006. Agencies were notified of the subdivision. Comments received by the Planning Department not included in the application packet are Exhibits A-1 through A-8 of the staff report.

**LEGAL NOTIFICATION:**

A legal advertisement was published in the Ravalli Republic on Tuesday, January 2, 2007. Notice of the project was posted on the property and adjacent property owners were notified by certified mail postmarked December 27, 2006. No public comments have been received to date.

**DEVELOPMENT  
PATTERN:**

Subject property	Vacant Rural
North	Agriculture
South	Residential
East	Residential
West	Residential

**INTRODUCTION**

The Riverview Orchards, Block 5, Lot 1-A, AP subsequent minor subdivision is a two-lot subdivision of 9.04 acres located northeast of Florence. The applicant signed an indemnification agreement on December 22, 2006, thereby allowing this application to be reviewed under the Ravalli County Subdivision Regulations in place when the application was originally submitted (April 22, 2004).

Concurrent with the subdivision proposal, the subdivider is requesting the following variances from the Subdivision Regulations:

1. From Section 5-4-5(a), to relieve the subdivider from the requirement to reconstruct Skyview Drive to County standards.
2. From Section 3-2-18, to relieve the subdivider from filing a road maintenance agreement for Skyview Drive that includes all the required provisions.
3. From Section 3-2-18, to relieve the subdivider from filing a road maintenance agreement for Longview Drive that includes all the required provisions.

*Staff recommends denial of Variance Request 1, conditional approval of Variance Requests 2 and 3, and conditional approval of the subdivision proposal.*

## RAVALLI COUNTY PLANNING BOARD

JANUARY 17, 2007

### RIVERVIEW ORCHARDS BLOCK 5, LOT 1-A, AP (SCHULTZ) TWO-LOT SUBSEQUENT MINOR SUBDIVISION AND THREE VARIANCE REQUESTS

#### RECOMMENDED MOTIONS

1. That the variance request from Section 5-4-5(a) of the Ravalli County Subdivision Regulations, to relieve the subdivider from reconstructing Skyview Drive to County standards, be **denied**, based on the findings of fact and conclusions of law in the staff report.
2. That the variance request from Section 3-2-18 of the Ravalli County Subdivision Regulations, to relieve the subdivider from the requirement to file a road maintenance agreement for Skyview Drive that includes all the required provisions, be **approved**, based on the findings of fact and conclusions of law in the staff report, and subject to the conditions in the staff report.
3. That the variance request from Section 3-2-18 of the Ravalli County Subdivision Regulations, to relieve the subdivider from the requirement to file a road maintenance agreement for Longview Drive that includes all the required provisions, be **approved**, based on the findings of fact and conclusions of law in the staff report.
4. That the Riverview Orchards, Block 5, Lot 1-A, AP subsequent minor subdivision be **approved**, based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report.

#### RECOMMENDED MITIGATING CONDITIONS OF APPROVAL FOR THE SUBDIVISION

1. A document entitled "Notifications to Future Property Owners" that includes the following notifications and the attachments listed below shall be included in the submittal of the final plat to the Planning Department and filed with the final plat:

**Notification of Proximity to Agricultural Operations.** This subdivision is located near existing agricultural activities. Some may find activities associated with normal agricultural activities objectionable and dangerous. (*Effects on Agriculture*)

**Notification of Road Maintenance Agreement.** Skyview Drive and Longview Drive are not maintained by Ravalli County, the State of Montana, or any other governmental entity. Neither the County nor the State assumes any liability for lacking or improper maintenance. This subdivision is party to covenants that address maintenance for these roads. These agreements outline which parties are responsible for maintenance and under what conditions. (*Effects on Local Services*)

**Notification of Irrigation and Storm Water Drainage Easement.** Within this subdivision there is an easement for storm water drainage and irrigation, as shown on the final plat. No structure or obstruction may be placed within this easement that is not required for storm water management or maintenance of irrigation infrastructure. All downstream water-right holders have the right to maintain and repair their irrigation facilities whenever necessary to keep them in good condition. The Eight Mile Creek Company must approve any relocation or alteration (e.g. installation of a culvert) of irrigation facilities. Any act that damages or destroys irrigation infrastructure, interferes with its operation or maintenance in any way, or restricts access so as to interfere with its maintenance is expressly prohibited. The downstream water right holders and those acting with the approval of the aforementioned irrigation company have the right to use the easement to maintain the ditches. Please contact the Eight Mile Creek Company, 620

Eight Mile Creek Road, Florence, MT 59833, for more information. (*Effects on Agricultural Water User Facilities, Local Services, Natural Environment, and Public Health & Safety*)

2. Protective covenants for this subdivision shall be submitted with the final plat that include the following provisions:

**Waiver of Protest to Creation of RSID/SID.** Owners and their successors-in-interest waive all rights in perpetuity to protest the creation of a city/rural improvement district for any purpose allowed by law, including, but not limited to, a community water system, a community wastewater treatment system, and improving and/or maintaining the roads that access the subdivision, including related right-of-way, drainage structures, and traffic control signs. (*Effects on Local Services*)

**Living with Wildlife.** Homeowners must accept the responsibility of living with wildlife, must accept responsibility for protecting their vegetation from damage, and must confine their pets and properly store garbage, pet food, and other potential attractants. Homeowners must be aware of potential problems associated with the occasional presence of wildlife such as deer, elk, black bear, mountain lion, coyote, fox, skunk, raccoon and magpie. Please contact the Montana Fish, Wildlife and Parks office in Missoula (3201 Spurgin Road, Missoula, MT 59804) for brochures that can help homeowners "live with wildlife." Alternatively, see the Education portion of FWP's web site at [www.fwp.mt.gov](http://www.fwp.mt.gov). (*Effects on Agriculture, Natural Environment, and Wildlife & Wildlife Habitat*)

The following covenants are designed to help minimize problems that homeowners could have with wildlife, as well as helping homeowners protect themselves, their property, and the wildlife that Montanans value.

- (a) Homeowners must be aware of the potential for **vegetation damage by wildlife**, particularly from deer feeding on green lawns, gardens, flowers, ornamental shrubs and trees in this subdivision. Homeowners should be prepared to take the responsibility to plant non-palatable vegetation or protect their vegetation (fencing, netting, repellents) in order to avoid problems. Also, consider landscaping with native vegetation that is less likely to suffer extensive feeding damage by deer.
- (b) **Gardens and fruit trees** can attract wildlife such as deer and bears. Keep produce and fruit picked and off the ground, because ripe or rotting vegetable material can attract bears and skunks. To help keep wildlife such as deer out of gardens, fences should be 8 feet or taller. Netting over gardens can help deter birds from eating berries.
- (c) **Garbage** should be stored in secure animal-resistant containers or indoors to avoid attracting animals such as bears, raccoons, and other wildlife. It is best not to set garbage cans out until the morning of garbage pickup.
- (d) **Do not feed wildlife** or offer supplements (such as salt blocks), attractants, or bait for deer or other wildlife. Feeding wildlife results in unnatural concentrations of animals that could lead to overuse of vegetation and disease transmission. Such actions unnecessarily accustom wild animals to humans, which can be dangerous for both. It is against state law (MCA 87-3-130) to provide supplemental feed attractants if it results in a "concentration of game animals that may potentially contribute to the transmission of disease or that constitutes a threat to public safety." Also, homeowners should be aware that deer might occasionally attract mountain lions to the area.
- (e) **Birdseed** can attract bears. If used, bird feeders should: (1) be suspended a minimum of 20 feet above ground level, (2) be at least 4 feet from any support poles or points, and (3)

should be designed with a catch plate located below the feeder and fixed such that it collects the seed knocked off the feeder by feeding birds.

- (f) **Pets** should be confined to the house, in a fenced yard, or in an outdoor kennel area, and not be allowed to roam as they can chase and kill big game and small birds and mammals. Under current state law it is illegal for dogs to chase hooved game animals and the owner may also be held guilty (MCA 87-3-124).
- (g) **Pet food and livestock feed** should be stored indoors or in animal-resistant containers in order to avoid attracting wildlife such as bears, skunks, raccoons, etc. **When feeding pets or livestock** do not leave food out overnight. Consider feeding pets indoors so that wild animals do not learn to associate food with your home.
- (h) **Barbecue grills** should be stored indoors. Keep all portions of the barbecues clean. Food spills and smells on the grill, lid, etc. can attract bears and other wildlife.
- (i) Consider **boundary fencing** that is no higher than 3-1/2 feet (at the top rail or wire) and no lower than 18 inches (at the bottom rail or wire) in order to facilitate wildlife movement and help avoid animals such as deer becoming entangled in the fence or injuring themselves when trying to jump the fence.
- (j) **Compost piles** can attract skunks and bears. If used they should be kept indoors or built to be wildlife-resistant. Compost piles should be limited to grass, leaves, and garden clippings, and piles should be turned regularly. Adding lime can reduce smells and help decomposition. Do not add food scraps. (Kitchen scraps could be composted indoors in a worm box with minimum odor and the finished compost can later be added to garden soil.)
- (k) **Apiaries (bee hives)** could attract bears in this area. (If used, consult Montana Fish, Wildlife, and Parks or the U.S. Fish and Wildlife Service for help in planning and constructing an apiary system that will help deter bears.)

**Lighting for New Construction.** Full cut-off lighting shall be required for any new construction within this subdivision. A full cut-off fixture means a fixture, as installed, that is designed or shielded in such a manner that all light rays emitted by the fixture, either directly from the lamps or indirectly from the fixture, are projected below a horizontal plane through the lowest point on the fixture where light is emitted. The source of light must be fully shielded on the top and sides, so as not to emit light upwards or sideways, but only allowing light to shine down towards the subject that is to be lighted. Spotlighting of flag poles shall be permitted. *(Effects on Public Health & Safety)*

**Radon Exposure.** The owner understands and accepts the potential health risk from radon concentrations, which are presently undetermined at this location. Unacceptable levels of radon can be reduced through building design and abatement techniques incorporated into structures. Property owners are encouraged to have their homes tested for radon. Contact the Ravalli County Environmental Health Department for further information. *(Effects on Public Health & Safety)*

**Primary Heat Source.** The primary heat source for the newly constructed residences in this subdivision shall be at least 75% efficient. *(Effects on Natural Environment)*

**Control of Noxious Weeds.** Lot owners shall control the growth of noxious weeds on their respective lot(s). Contact the Ravalli County Weed District, 329 Stevensville Airport Road, Stevensville, MT 59870, for further information. *(Effects on Natural Environment)*

**Required Posting of County-Issued Addresses for Lots within this Subdivision.** The Florence Rural Fire District has adopted the Uniform Fire Code, which requires lot owners to post County-issued addresses at the intersection of the driveway leading to each residence and the road providing access to the lot as soon as construction on the residence begins. *(Effects on Local Services and Public Health & Safety)*

**Access Requirements for Lots within this Subdivision.** The Florence Rural Fire District has adopted the Uniform Fire Code. All accesses, including driveways to residences over 150' in length, must have a minimum unobstructed travel surface width of 20', a vertical clearance of 13'6" and an all-weather surface that can accommodate the weight of a fire truck. Please contact the Florence Rural Fire District for further information. *(Effects on Local Services and Public Health & Safety)*

**Amendment.** Written governing body approval shall be required for amendments to provisions of the covenants that were required to be included as a condition of subdivision approval. *(Effects on all six criteria)*

3. The subdividers shall include an RSID/SID waiver in a notarized document filed with subdivision plat that states the following: Owners and their successors-in-interest waive all rights in perpetuity to protest the creation of a city/rural improvement district for any purpose allowed by law, including, but not limited to a community water system, a community wastewater treatment system, and improving and/or maintaining the roads that access the subdivision including related right-of-way, drainage structures, and traffic control signs. *(Effects on Local Services)*
4. The subdivider shall provide evidence with the final plat submittal that they have applied for County-issued addresses for each lot within this subdivision. *(Effects on Local Services and Public Health & Safety)*
5. Prior to final plat approval, the subdividers shall provide a letter from the Florence Rural Fire District stating that they have provided the required 1,000 gallon-per-minute water supply or 2,500 gallon-per-lot water storage for fire protection for each lot within this subdivision. Alternatively, the subdivider may provide evidence that a \$500-per-lot contribution has been made to the Florence Rural Fire District with the final plat submittal in lieu of the required water supply or water storage for fire protection. *(Effects on Local Services and Public Health & Safety)*
6. The subdivider shall submit a letter or receipt from the Florence-Carlton School District stating that they have received [*an amount to be determined by the Planning Board*]-per-lot contribution prior to final plat approval. Alternatively, the subdivider may place an encumbrance on the final plat stating that the [*amount*] contribution shall be made to the School District upon first conveyance, including lease or rent, of each lot. *(Effects on Local Services)*
7. The irrigation and storm water drainage easement shall be shown on the final plat as shown on the preliminary plat. A note shall be placed on the final plat stating that no structure shall be allowed within the easement unless required for storm water management or maintenance of the irrigation infrastructure. *(Effects on Agricultural Water User Facilities, Natural Environment, and Public Health & Safety)*
8. With the final plat submittal, the applicant shall provide evidence that the subject property has been annexed into the Riverview Orchards Homeowners' Association. *(Variance 2)*

## **SUBDIVISION REPORT**

### **COMPLIANCE WITH PRIMARY SUBDIVISION REVIEW CRITERIA**

#### **CRITERION 1: EFFECTS ON AGRICULTURE**

##### **Findings of Fact:**

1. The proposed subdivision on 9.0 acres will result in two lots of 4.0 and 5.0 acres. The property is located approximately four miles northeast of the community of Florence off Skyview and Longview Drive.
2. The property is located in an area of residential and agricultural uses. To mitigate impacts on agriculture, a notification of proximity to agricultural operations shall be included in the notifications document filed with the final plat. The protective covenants, also filed with the final plat, shall include a provision requiring homeowners to keep pets confined to the house, a fenced yard, or in an outdoor kennel. (*Conditions 1 and 2*)
3. According to the application, the property has been used for agriculture in the past.
4. There are no soils on the property that are listed as Prime Farmland Soils or Farmland of Statewide Importance by the U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS).

##### **Conclusions of Law:**

1. With the mitigating conditions of approval and requirements of final plat approval, impacts of the subdivision on surrounding agriculture will be reduced.
2. The creation of these lots will not take Prime Farmland or Farmland of Statewide Importance out of production.

#### **CRITERION 2: EFFECTS ON AGRICULTURAL WATER USER FACILITIES**

##### **Findings of Fact**

1. The application states that irrigation water shares are provided to the property by the Eight Mile Creek Company through the East Riverview Orchards Homeowners Association. An existing irrigation ditch traversing the property, as shown on the preliminary plat, will provide both lots with water.
2. A letter from the Eight Mile Creek Company, dated September 29, 2006, states their approval of the re-allocation of water shares. (*Application*)
3. According to the application and the preliminary plat, there is a 20-foot-wide irrigation and drainage easement centered on an existing irrigation ditch that traverses the subdivision. This easement shall be shown on the final plat as a condition of approval in order to mitigate impacts of the subdivision on agricultural water user facilities, and a note shall be placed on the plat stating that no structure shall be allowed within the easement unless required for storm water management or maintenance of the irrigation infrastructure. (*Condition 7*)
4. To notify future property owners of the irrigation rights associated with this property and the role of the irrigation district, and to mitigate potential impacts on agricultural water user facilities, a notification of the irrigation facilities and easements shall be filed with the final plat. The notification shall also state that the Eight Mile Creek Company must approve of any relocation or alteration of the irrigation facilities on the property. (*Condition 1*)

##### **Conclusion of Law:**

With the mitigating conditions of approval and requirements of final plat approval, impacts on agricultural water user facilities will be reduced.

### **CRITERION 3: EFFECTS ON LOCAL SERVICES**

#### **Findings of Fact:**

1. Eight Mile Creek Road, a County-maintained road providing access to the subdivision, does not meet County standards. The applicant is required to pay the pro-rata share of the cost to improve the portion of this road providing access to the subdivision to meet County standards.
2. There are two proposed single-family residential lots within this subdivision. It is estimated that at build-out this subdivision will generate a total of 16 vehicular trips per day, assuming 8 trips per day per single-family dwelling.
3. Prior to final plat approval, the subdivider is required to submit certification that the private roads leading to the subdivision meet the County standards in place at the time the subdivision application was submitted (April 22, 2004). The subdivider has submitted a prior certification for Longview Drive. Skyview Drive does not meet County standards, and the subdivider is requesting a variance from the requirement to improve it. Planning staff has recommended denial. (*Variance 1*)
4. Skyview Drive is a private road maintained by two homeowners associations: Riverview Orchards and East Riverview Orchards. The applicant is requesting a variance from the requirement to file a road maintenance agreement for this road that meets all of the required provisions. Staff has recommended conditional approval. (*Variance 2*)
5. Longview Drive is a County-standard, private road maintained by the East Riverview Orchards Homeowners' Association, in which the subject property is included. The applicant is requesting a variance from the requirement to file a road maintenance agreement for this road that meets all of the required provisions. Staff has recommended conditional approval. (*Variance 3*)
6. To mitigate impacts on local services, the subdivider shall apply for County-issued addresses. A provision requiring property owners to post County-issued addresses at their driveways shall be included in the covenants. (*Conditions 2 and 4*)
7. The subdivision is located within the Florence Rural Fire District. The Florence Rural Fire District has provided comments on previous subdivision proposals indicating they have adopted a policy that addresses access, posting of addresses, and water supply requirements. Conditions of approval will meet the recommendations of the Florence Rural Fire District and mitigate impacts on local services. (*Conditions 2 and 5*)
8. To further mitigate impacts on local services, the subdivider shall meet the water supply requirements for the Florence Rural Fire District, which is a 1,000 gallon per minute water supply or a 2,500 gallon per lot water storage. Alternatively, the subdivider may contribute \$500 per lot and provide a letter from the Florence Rural Fire District that the contribution has been made prior to final plat approval. (*Condition 5*)
9. With this subdivision, it is estimated that approximately 3 school-aged children will be added to the Florence-Carlton School District, assuming an average of 1.5 children per single-family residence. In a letter dated January 9, 2007, the School District requested that a fee be assessed to the subdivider in accordance with the results of the District's impact fee study (Exhibit A-3).
10. The subdividers stated they will make a contribution to the Florence-Carlton School District, but did not specify the amount. No specific comment has been received from the School District. To mitigate impacts of the subdivision on the School District, the subdivider shall contribute (an amount to be determined by the Planning Board in consultation with the subdivider) per residential lot to the Florence School District. (*Condition 6*)
11. In order to ensure the proper drainage of this subdivision and to mitigate impacts on local services, a notification of storm water drainage easements shall be included in the notifications document to be filed with the final plat. (*Condition 1*)
12. To mitigate impacts on local services, the notifications document shall include information regarding the covenants that address road maintenance for Skyview Drive and Longview Drive. (*Condition 1*)



13. To mitigate potential impacts of this subdivision on any possible future public water, sewer system, or improvements to the road system, the RSID/SID waiver filed with the final plat shall address these services/facilities. (*Conditions 2 and 3*)
14. Individual wells and wastewater treatment systems are proposed to serve the lots. (*See Effects on Natural Environment*)
15. Bitterroot Disposal provides service to this site.
16. The Ravalli County Sheriff's Office provides law enforcement services to this area.
17. Adequate public services are available to the subdivision.

Conclusion of Law:

With the mitigating conditions of approval, action on the variances, and requirements of final plat approval, impacts of the subdivision on local services will be reduced.

**CRITERION 4: EFFECTS ON NATURAL ENVIRONMENT**

Findings of Fact:

1. The property is currently vacant and, according to the application, has been used as a hay field.
2. The subdivider has requested a variance from the County road standards to relieve the subdivider from the requirement to pave Skyview Drive. Dust generated from gravel roads has a negative impact on air quality. Staff has recommended denial of the request, which will result in the paving of the road. (*Variance 1*)
3. The preliminary plat shows a 20-foot-wide easement along the drainage traversing the property. The final plat shall show the easement as shown on the preliminary plat. The final plat shall state that no structures are allowed within the easement unless required for storm water management or maintenance of irrigation infrastructure. A notification of the easement shall be included in the notifications document. (*Conditions 1 and 7*)
4. To mitigate air pollution resulting from home heating emissions, the protective covenants filed with the final plat shall state that the primary heat source for any newly constructed residences must be at least 75% efficient. (*Condition 2*)
5. To mitigate impacts on the natural environment, the covenants shall include the Living with Wildlife provisions, generally recommended by Montana Fish, Wildlife, and Parks for subdivisions in the area. (*Condition 2*)
6. To mitigate impacts on the natural environment, the covenants shall include a provision requiring lot owners to control the growth of noxious weeds on their property. (*Condition 2*)
7. The Ravalli County Environmental Health Department provided documentation indicating that they have received adequate information for local subdivision review to occur. (Exhibit A-8)
8. Individual wells and wastewater treatment systems are proposed to serve lots within the subdivision. A Certificate of Subdivision Plat Approval was issued by Montana Department of Environmental Quality (DEQ) on August 25, 2006 (Exhibit A-7)

Conclusion of Law:

With the action on the variance, mitigating conditions, and requirements of final plat approval, impacts from this subdivision on the natural environment will be reduced.

**CRITERION 5: EFFECTS ON WILDLIFE & WILDLIFE HABITAT**

Findings of Fact:

1. The property is approximately four miles northeast of Florence and is adjacent to other low-density residential development.
2. Montana Fish, Wildlife, and Parks (FWP) did not submit comments specific to this subdivision, but generally recommends that the Living with Wildlife provisions be included in the covenants. Condition 2 addresses the usual recommendations of FWP.
3. According to the Montana Natural Heritage Program (MNHP), the westslope cutthroat trout, Townsend's big-eared bat, and Lewis's woodpecker are species of concern that are located in the sections in which the property lies (Exhibit A-1). In a sensitive species report waiver

request dated January 11, 2007, the applicant stated that the property is not located in any of the zones of influence shown on the MNHP map, and that Eight Mile Creek could not support the trout. The Planning Department approved this request on January 12, 2007.

**Conclusion of Law:**

With the mitigating conditions of approval and requirements of final plat approval, impacts on Wildlife & Wildlife Habitat will be reduced.

**CRITERION 6: EFFECTS ON PUBLIC HEALTH & SAFETY**

**Findings of Fact:**

1. The subdivider has requested a variance from the County road standards to relieve the subdivider from the requirement to pave Skyview Drive. Dust generated from gravel roads has a negative impact on public health. Staff has recommended denial of the request, which will result in the paving of the road. (*Variance 1*)
2. To mitigate impacts on public health & safety, a notification of the irrigation and storm water drainage easement shall be included in the notifications document. Additionally, the final plat shall show the easement as shown on the preliminary plat. A note shall be placed on the final plat stating that no structure shall be allowed within the easement unless required for storm water management or maintenance of the irrigation infrastructure. (*Conditions 1 and 7*)
3. To mitigate impacts on public health & safety, the subdivider shall apply for County-issued addresses and a provision requiring property owners to post County-issued addresses at their driveways shall be in the covenants. (*Conditions 2 and 4*)
4. The proposed subdivision is located within the Florence Rural Fire District. Conditions 2 and 5 address impacts to the District and public health & safety.
5. To mitigate the impacts of light pollution stemming from new construction, the protective covenants shall include a provision requiring full cut-off lighting with the exception of flag poles. (*Condition 2*)
6. There is a prevalence of radon in the County. To mitigate impacts on public health & safety, the covenants shall include a statement regarding radon exposure. (*Condition 2*)
7. The Ravalli County Sheriff's Office provides services to this subdivision.
8. Individual wells and wastewater treatment systems are proposed for lots within this subdivision. (*See Effects on Natural Environment*)
9. With the conditions and requirements of final plat approval, access to the subdivision will be adequate for public health & safety.

**Conclusion of Law:**

With the denial of Variance 1 and the mitigating conditions and requirements of final plat approval, impacts on public health & safety will be reduced.

**COMPLIANCE WITH:**

**1) THE SURVEY REQUIREMENTS PROVIDED FOR IN PART 4 OF M.C.A. 76-3.**

**Finding of Fact:**

The Seal of a Professional Land Surveyor or Engineer is required on all final plats, which states that the subdivision complies with part 4 of M.C.A. 76-3.

**Conclusion of Law:**

This proposal meets the survey requirements, or conditions have been required to bring the proposal into compliance.

**2) THE LOCAL SUBDIVISION REGULATIONS PROVIDED FOR IN PART 5 OF M.C.A. 76-3.**

**Finding of Fact:**

Subdivisions are required to comply with the local subdivision regulations provided for in part 5 of M.C.A. 76-3.

Conclusion of Law:

The subdivider has submitted a plan that complies with the requirements of local subdivision regulations, or conditions have been required that will bring the plan into compliance.

**3) THE LOCAL SUBDIVISION REVIEW PROCEDURE PROVIDED FOR IN THE RAVALLI COUNTY SUBDIVISION REGULATIONS**

Findings of Fact:

1. Subdivisions are required to comply with the local subdivision review procedure provided for in the Ravalli County Subdivision Regulations.
2. A decision of the governing body rejecting or approving a proposed subdivision may be appealed to the district court within thirty (30) days of such decision. The petition shall specify the grounds upon which the appeal is made. An appeal may be made by the subdivider; a landowner with a property boundary contiguous to the proposed subdivision or a private landowner with property within the unincorporated area of the county that can show a likelihood of material injury to the landowner's property or its value; a first class municipality if the subdivision is within three miles of its limits, a second class municipality if a subdivision is within two miles of its limits, or a third class municipality or town if the subdivision is within one mile of its limits. An aggrieved party means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and injuriously affected by the decision.

Conclusion of Law:

This development plan proposal has followed the necessary application procedure and has been reviewed within the procedures provided in Chapter 3 of the Ravalli County Subdivision Regulations.

**CONSISTENCY WITH EXISTING ZONING AND COVENANTS**

Findings of Fact:

1. There are existing covenants on the property. (*Application*) The proposal appears to be consistent with existing covenants.
2. This property is not located within a zoning district.
3. Interim countywide zoning limits subdivisions to a minimum of two acres per dwelling unit, on average. The average density for this subdivision is approximately 4.5 acres per dwelling unit.

Conclusion of Law:

This proposal complies with existing zoning and covenants.

**PROVISION OF EASEMENTS FOR UTILITIES**

Findings of Fact:

1. The preliminary plat indicates that existing utility easements are located along Skyview Drive and Longview Drive. Utility easements are required to be shown on the final plat.
2. According to the application, the proposed subdivision will be served by Ravalli Electric Co-op and Qwest Telephone. Utility companies have been notified of the proposed subdivision. Utility certificates are a requirement of final plat approval.

Conclusion of Law:

Utility services are available to the subdivision.

**PROVISION OF LEGAL AND PHYSICAL ACCESS**

Finding of Fact:

Physical and legal access for this subdivision is proposed via Eight Mile Creek Road, Skyview Drive, and Longview Drive.

Conclusion of Law:

With the action on the variance request and the conditions and requirements of final plat approval, the proposal meets physical and legal access requirements.

## VARIANCE REPORT 1

### VARIANCE REQUEST

The subdivider has requested a variance from Section 5-4-5(a) of the Ravalli County Subdivision Regulations, to relieve the subdivider from the requirement to reconstruct Skyview Drive to meet County standards.

### Compliance with Review Criteria

#### **A. The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.**

##### Findings of Fact:

1. According to the application, Skvyview Drive is a 24-foot-wide gravel road that serves six lots.
2. Allowing Skyview Drive to remain in its current condition as a gravel road adversely affects public health, safety, general welfare, and adjoining landowners because the road will generate road dust.
3. David Ohnstad provided an e-mail comment dated January 3, 2007, which states that the Road and Bridge Department does not support the variance from the roadway improvement requirements of the Subdivision Regulations. (Exhibit A-2)
4. The Board of Health generally commented on road standards by stating: "In a discussion of air quality and roads, the Board of Health unanimously agreed that air quality and road safety are of paramount importance in the development of any road standards." A subsequent letter from members of the Board of Health addresses concerns associated with the impacts of road dust on public health. (Exhibits A-4 & A-5)

##### Conclusion of Law:

The variance request is opposed by the County Road and Bridge Department, the Board of Health, and the Ravalli County Planning Department. The substandard road will generate dust and diminish public health and the natural environment. Therefore, the impacts could be injurious to adjoining property owners and the general public.

#### **B. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.**

##### Finding of Fact:

There are many properties in Ravalli County that are accessed by substandard, privately-maintained roads.

##### Conclusion of Law:

The conditions upon which the variance is proposed are not unique to the property.

#### **C. Physical conditions, such as topography or parcel shape, prevent the applicant from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).**

##### Finding of Fact:

There are no physical conditions that would prohibit the subdivider from complying with the Regulations.

##### Conclusion of Law:

The variance request does not meet this criterion. Financial hardship cannot be considered as grounds for approving a variance request.

**D. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.**

Findings of Fact:

1. Interim zoning regulations do not apply to this variance request.
2. Relevant countywide provisions in the Ravalli County Growth Policy are outlined below. Provisions of the Ravalli County Growth Policy are followed by an analysis (bulleted points) of the variance request against these provisions.

***Countywide Goal 3: Protect air quality***

***Countywide Policy 3.2: Minimize dust and other air pollution by appropriate subdivision regulation.***

- The subdivision regulations require paving of Skyview Drive.
- The Ravalli County Board of Health has expressed concerns regarding air pollution caused by dust. (See Variance Criterion A and Exhibits A-4 & A-5)

***Countywide Goal 4: Provide necessary infrastructure and public services to accommodate population growth and new development without undue impacts on the quality, quantity and cost of service to existing residents.***

***Countywide Policy 4.1: Encourage development that will minimize or avoid additional costs to existing taxpayers.***

- Lot 1-A1 within this subdivision will access off Skyview Drive, a privately-maintained road that will remain substandard if the variance is granted.
- The Road Department does not support the granting of variances from roadway improvement standards. (Exhibit A-2)

***Countywide Policy 4.5: Developers will be responsible for providing the infrastructure necessary within the development such as community water, sewage treatment and roads. A system of "nexus and proportionality" will govern external infrastructure costs attributable to the developer.***

- The applicant has requested a variance from the requirement that the road be reconstructed to meet the road design standards in the Ravalli County Subdivision Regulations.

Conclusions of Law:

1. Existing zoning regulations do not apply to this variance request.
2. The Growth Policy does not support granting the variance request.

**E. The variance will not cause a substantial increase in public costs.**

Findings of Fact:

1. Skyview Drive is a privately-maintained, substandard road.
2. The subdivision is projected to generate an additional eight trips on Skyview Drive.
3. The Road Department does not support granting the variance request.
4. The Ravalli County Board of Health has provided comments to the Planning Department expressing concern about dust generated from gravel roads. (Exhibits A-4 & A-5)

Conclusion of Law:

There is no specific, measurable increase in public costs as a result of this variance. However, the increased traffic on unpaved roads may contribute generally to conditions that increase public costs.

## VARIANCE REPORT 2

### VARIANCE REQUEST

The subdivider has requested a variance from Section 3-2-18 of the Ravalli County Subdivision Regulations, to relieve the subdivider from the requirement to file a road maintenance agreement for Skyview Drive that meets the required standards. Road maintenance is currently addressed by the covenants of the East Riverview Orchards Homeowners' Association and the Riverview Orchards Homeowners' Association. These covenants address some, but not all, of the provisions required by the Subdivision Regulations for a road maintenance agreement.

### Compliance with Review Criteria

#### **A. The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.**

##### Findings of Fact:

1. Section 3-1-4 (10) states that road maintenance agreements are necessary to allow landowners using the private road in question the opportunity to provide for its long-term maintenance.
2. The lots within this subdivision will use two different roads for access: Lot 1-A1 will use Skyview Drive and Lot 1-A2 will use Longview Drive.
3. The applicants are requesting a variance from Section 3-2-18, the requirement to file a road maintenance agreement that meets the requirements of the Subdivision Regulations for Skyview Drive, because the existing mechanisms for road maintenance do not include all of the required provisions.
4. There are two homeowners' associations responsible for road maintenance on Skyview Drive. The road is located along the boundary of the Riverview Orchards Homeowners' Association (ROHA) and the East Riverview Orchards Homeowners' Association (EROHA). Consequently, road maintenance of Skyview Drive is split between these two associations.
5. There appears to be no cooperative agreement between the homeowners' associations in effect.
6. The EROHA covenants, recorded as instrument number 469925, are included in the application packet. These covenants and associated documents address most of the provisions required by Section 3-2-18. The subject property is subject to these covenants.
7. The EROHA covenants are unclear in how they may be amended, abandoned, or allowed to expire, and under what circumstances Commissioner approval is required.
8. The ROHA covenants, recorded as Book 151, Page 311 Deeds, are included as **Attachment A** of this report. The provisions in this document appear to be extremely limited in regards to road maintenance, as only six of the 12 provisions required by Section 3-2-18 appear to be addressed in the document, while the remaining provisions are not addressed.
9. The ROHA covenants do not require Commissioner approval for the amendment or abandonment of the covenants.
10. In a letter dated May 12, 2005, ROHA indicated that the subject property would be annexed into the covenants. As a condition of final plat approval, the applicant shall provide evidence that the subject property has been annexed into the Riverview Orchards Homeowners' Association. (*Condition 8*)

##### Conclusions of Law:

1. The property and the eastern half of Skyview Drive are under the jurisdiction of the EROHA and subject to covenants that include some provisions for road maintenance.
2. The western half of Skyview Drive is under the jurisdiction of ROHA, which has assented to the inclusion of the subject property in the covenants, including some limited provisions for road maintenance.
3. Potential impacts to the public health, safety, and general welfare will be reduced through the inclusion of the subject property in the existing mechanisms for road maintenance.

**B. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.**

Finding of fact:

The application states that the property is unique because there are two homeowners' associations responsible for the maintenance of Skyview Drive.

Conclusion of Law:

It is a relatively unique situation to have one road split between the jurisdiction of two homeowners' associations.

**C. Physical conditions, such as topography or parcel shape, prevent the applicants from meeting the strict letter of these Regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).**

Finding of fact:

The application states that there are no physical conditions that have any bearing on the variance request.

Conclusion of Law:

The variance request does not meet this criterion.

**D. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.**

Findings of fact:

1. The interim zoning regulations do not address road maintenance.
2. Relevant countywide provisions in the Ravalli County Growth Policy are outlined below. Provisions of the Ravalli County Growth Policy are followed by an analysis (bulleted points) of the variance request against these provisions.

**Countywide Goal 4:** Provide necessary infrastructure and public services to accommodate population growth and new development without undue impacts on the quality, quantity and cost of service to existing residents.

**Countywide Policy 4.4:** Improve and maintain existing infrastructure and public services.

**Countywide Policy 4.5:** Developers will be responsible for providing the infrastructure necessary within the development such as community water, sewage treatment and roads. A system of "nexus and proportionality" will govern external infrastructure costs attributable to the developer.

- The applicant is responsible for infrastructure for this subdivision and has requested a variance from the road maintenance agreement requirements pertaining to Skyview Drive, which is a privately-maintained road. New homeowners within this subdivision will be responsible for maintaining roads as part of EROHA, and, per Condition 8, ROHA.
- The road maintenance for this road is split between the jurisdictions of two different homeowners associations. The associations' governing documents address road maintenance to some extent, though they do not guarantee long-term maintenance of the road. However, a road maintenance agreement in which only one homeowner is a member would provide no further guarantee than the existing documentation.

Conclusion of Law:

There is no legal guarantee that ROHA and EROHA will maintain the road in perpetuity. However, denial of the variance may decrease the possibility of road maintenance on Skyview Drive.



**E. The variance will not cause a substantial increase in public costs.**

Findings of fact:

1. The application states that the variance will have no impact on public costs, because the road is privately maintained by private homeowners associations.
2. If a separate road maintenance agreement for Skyview Drive were to be filed with this subdivision, most likely only Lot 1-A1 would be party to the agreement. The road maintenance agreements required by Section 3-2-18 would place this responsibility under the purview of a single property owner who would be free to choose whether and when to maintain the road.

Conclusion of Law:

The lack of a proper road maintenance agreement can result in an increase to public costs. However, denial of this variance would provide no further assurance of road maintenance than the existing documentation.

**VARIANCE REPORT 3**

**VARIANCE REQUEST**

The subdivider has requested a variance from Section 3-2-18 of the Ravalli County Subdivision Regulations, to relieve the subdivider from the requirement to file a separate road maintenance agreement for Longview Drive that meets the required standards. Road maintenance is currently addressed by the covenants of the East Riverview Orchards Homeowners' Association. These covenants address some, but not all, of the provisions required by the Subdivision Regulations for a road maintenance agreement.

**Compliance with Review Criteria**

**A. The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.**

Findings of Fact:

1. Section 3-1-4 (10) states that road maintenance agreements are necessary to allow landowners using the private road in question the opportunity to provide for its long-term maintenance.
2. The lots within this subdivision will use two different roads for access: Lot 1-A1 will use Skyview Drive and Lot 1-A2 will use Longview Drive.
3. The applicants are requesting a variance from Section 3-2-18, the requirement to file a road maintenance agreement that meets the requirements of the Subdivision Regulations for Longview Drive, because existing mechanisms for road maintenance do not include all of the required provisions.
4. The East Riverview Orchards Homeowners' Association (EROHA) is responsible for the maintenance of Longview Drive. This property is a party to EROHA's covenants.
5. The EROHA covenants, recorded as instrument number 469925, are included in the application packet. These covenants and associated documents address most of the provisions required by Section 3-2-18.
6. The EROHA covenants are unclear in how they may be amended, abandoned, or allowed to expire, and under what circumstances Commissioner approval is required.
7. If a road maintenance agreement for Longview Drive were to be filed with this subdivision, only Lot 1-A2 would be responsible for this road's maintenance. The road maintenance agreements required by Section 3-2-18 would place this responsibility under the purview of a single property owner who would be free to choose whether and when to maintain the road.
8. Interested agencies were contacted for their comments on the proposal and no comments have been received to date.

Conclusions of Law:

1. This property and the maintenance of Longview Drive are under the jurisdiction of the EROHA and subject to covenants that include some provisions for road maintenance.
2. Although the existing covenants do not address all provisions of Section 3-2-18 directly, it appears that the intent of this Section is met.
3. Potential impacts to the public health, safety, and general welfare would not be mitigated through the denial of this variance.

**B. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.**

Finding of fact:

Occasionally, there are subdivisions that occur along privately-maintained roads that are already subject to a road maintenance agreement.

Conclusion of Law:

The situation is not unique to the property.

**C. Physical conditions, such as topography or parcel shape, prevent the applicants from meeting the strict letter of these Regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).**

Finding of fact:

The application states that there are no physical conditions that have any bearing on the variance request.

Conclusion of Law:

The variance request does not meet this criterion.

**D. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.**

Findings of fact:

1. The interim zoning regulations do not address road maintenance.
2. Relevant countywide provisions in the Ravalli County Growth Policy are outlined below. Provisions of the Ravalli County Growth Policy are followed by an analysis (bulleted points) of the variance request against these provisions.

**Countywide Goal 4:** Provide necessary infrastructure and public services to accommodate population growth and new development without undue impacts on the quality, quantity and cost of service to existing residents.

**Countywide Policy 4.4:** Improve and maintain existing infrastructure and public services.

**Countywide Policy 4.5:** Developers will be responsible for providing the infrastructure necessary within the development such as community water, sewage treatment and roads. A system of "nexus and proportionality" will govern external infrastructure costs attributable to the developer.

- The applicant is responsible for infrastructure for this subdivision and has requested a variance from the road maintenance agreement requirements pertaining to Longview Drive, which is a privately-maintained road. New homeowners within this subdivision will be responsible for maintaining roads as part of the East Riverview Orchards Homeowners' Association.

- If a separate road maintenance agreement were filed with this subdivision for Longview Drive, only Lot 1-A2 would be subject to the agreement, and the landowner would be free to choose whether and when to maintain the road.

Conclusion of Law:

The existing covenants are not ideal for assuring the maintenance of the road. However, denial of this variance could decrease the possibility of road maintenance on Skyview Drive.

**E. The variance will not cause a substantial increase in public costs.**

Findings of fact:

1. The application states that the variance will have no impact on public costs, because the road is privately-maintained by an existing homeowners associations at no cost to the public.
2. If a road maintenance agreement for Longview Drive were to be filed with this subdivision, most likely only Lot 1-A2 would be party to the agreement. The road maintenance agreements required by Section 3-2-18 would place this responsibility under the purview of a single property owner, who would be free to choose whether and when to maintain the road.

Conclusion of Law:

The lack of a proper road maintenance agreement can result in an increase to public costs. However, denial of this variance would provide no further assurance of road maintenance than the existing documentation.



RECEIVED

JAN 09 2007

IC-07-01-22  
Ravalli County Planning Dept.



MONTANA  
**Natural Heritage  
Program**

P.O. Box 201800 \* 1515 East Sixth Avenue \* Helena, MT 59620-1800 \* fax 406.444.0581 \* tel 406.444.5354 \* <http://mtnhp.org>

January 8, 2007

## EXHIBIT A-1

Shaun Morrell  
Planner  
Ravalli County Planning Department  
215 South 4<sup>th</sup> Street, Suite F  
Hamilton, MT 59840

Dear Shaun,

I am writing in response to your request for information on plant and animal species of special concern in the vicinity of the Riverview Orchards Block 5 project in Sections 4, 5, 8, 9, T10N, R19W in Ravalli County. We checked our databases for information in this general area and have enclosed 6 species of concern reports, explanatory material, and one map.

Please keep in mind the following when using and interpreting the enclosed information and maps:

- (1) These materials are the result of a search of our database for species of concern that occur in an area defined by requested township, range and sections with an additional one-mile buffer surrounding the requested area. This is done to provide you with a more inclusive set of records and to capture records that may be immediately adjacent to the requested area. Reports are provided for the species of concern that are located in your requested area with approximately a one-mile buffer. Species of concern outside of this area may be depicted on the map but are not reported.
- (2) On the map, polygons represent one or more source features as well as the locational uncertainty associated with the source features. A source feature is a point, line, or polygon that is the basic mapping unit of an EO Representation. The recorded location of the occurrence may vary from its true location due to many factors, including the level of expertise of the data collector, differences in survey techniques and equipment used, and the amount and type of information obtained. Therefore, this inaccuracy is characterized as locational uncertainty, and is now incorporated in the representation of an EO. If you have a question concerning a specific EO, please do not hesitate to contact us.
- (3) This report may include sensitive data, and is not intended for general distribution, publication or for use outside of your agency. In particular, public release of specific location information may jeopardize the welfare of threatened, endangered, or sensitive species or communities.
- (4) The accompanying map(s) display management status, which may differ from ownership. Also, this report may include data from privately owned lands, and approval by the landowner is advisable if specific location information is considered for distribution. Features shown on this map do not imply public access to any lands.
- (5) Additional biological data for the search area(s) may be available from other sources. We suggest you contact the U.S. Fish and Wildlife Service for any additional information on threatened and endangered species (406-449-5225). Also, significant gaps exist in the Heritage Program's fisheries data, and we suggest you contact the Montana Rivers Information System for information related to your area of interest (406-444-3345).

- (6) Additional information on species habitat, ecology and management is available on our web site in the Plant and Animal Field Guides, which we encourage you to consult for valuable information. You can access these guides at <http://mtnhp.org>. General information on any species can be found by accessing the link to NatureServe Explorer.

The results of a data search by the Montana Natural Heritage Program reflect the current status of our data collection efforts. These results are not intended as a final statement on sensitive species within a given area, or as a substitute for on-site surveys, which may be required for environmental assessments. The information is intended for project screening only with respect to species of concern, and not as a determination of environmental impacts, which should be gained in consultation with appropriate agencies and authorities.

I hope the enclosed information is helpful to you. If in the future you would prefer to receive a digital PDF file instead of paper, just let me know. Please feel free to contact me at (406) 444-3009 or via my e-mail address, below, should you have any questions or require additional information.

Sincerely,



Kathy Lloyd  
Montana Natural Heritage Program  
[klloyd@mt.gov](mailto:klloyd@mt.gov)



Natural Resource Information System  
Montana State Library  
P.O. Box 201800  
Helena, MT 59620-1800  
(406) 444-3000 mtnhp@state.mt.us

## Species of Concern Data Report

Visit <http://mtnhp.org> for additional information.

Monday, January 8, 2007

### *Melanerpes lewis*

Element Occurrence Map Label: 13100

Element Subnational ID: 15135

EO Number: 90503

Common Name: Lewis's Woodpecker

Species of Concern (Y) / Potential Concern (W): Y

First Observation Date:

Description: Vertebrate Animal

Last Observation Date:

#### Natural Heritage Ranks:

#### Federal Agency Status:

State: S2B

U.S. Fish & Wildlife Service:

Global: G4

U.S. Forest Service:

U.S. Bureau of Land Management:

EO Rank:

EO Data

### *Oncorhynchus clarkii lewisi*

Element Occurrence Map Label: 19980

Element Subnational ID: 14899

EO Number: 39211

Common Name: Westslope Cutthroat Trout

Species of Concern (Y) / Potential Concern (W): Y

First Observation Date:

Description: Vertebrate Animal

Last Observation Date:

#### Natural Heritage Ranks:

#### Federal Agency Status:

State: S2

U.S. Fish & Wildlife Service:

Global: G4T3

U.S. Forest Service: SENSITIVE

U.S. Bureau of Land Management: SENSITIVE

EO Rank:

EO Data

### *Oncorhynchus clarkii lewisi*

Element Occurrence Map Label: 19807

Element Subnational ID: 14899

EO Number: 39265

Common Name: Westslope Cutthroat Trout

Species of Concern (Y) / Potential Concern (W): Y

First Observation Date:

Description: Vertebrate Animal

Last Observation Date:

#### Natural Heritage Ranks:

#### Federal Agency Status:

State: S2

U.S. Fish & Wildlife Service:

Global: G4T3

U.S. Forest Service: SENSITIVE

U.S. Bureau of Land Management: SENSITIVE

EO Rank:

EO Data



## *Centunculus minimus*

Element Occurrence Map Label: 2698

Element Subnational ID: 13700

EO Number: 4

Common Name: Chaffweed

Species of Concern (Y) / Potential Concern (W): Y

First Observation Date: 1993-08-05

Description: Vascular Plant

Last Observation Date: 1993-08-05

### Natural Heritage Ranks:

### Federal Agency Status:

State: S2

U.S. Fish & Wildlife Service:

Global: G5

U.S. Forest Service:

U.S. Bureau of Land Management: SENSITIVE

EO Rank: B

EO Data

100+ plants. Associated species : Juncus bufonius, Trifolium microcephalum, Agrostis scabra and Gnaphalium palustre.

## *Lynx canadensis*

Element Occurrence Map Label: 4303

Element Subnational ID: 13134

EO Number: 450

Common Name: Canada Lynx

Species of Concern (Y) / Potential Concern (W): Y

First Observation Date:

Description: Vertebrate Animal

Last Observation Date:

### Natural Heritage Ranks:

### Federal Agency Status:

State: S3

U.S. Fish & Wildlife Service: LT

Global: G5

U.S. Forest Service: THREATENED

U.S. Bureau of Land Management: SPECIAL STATUS

EO Rank:

EO Data

## *Haliaeetus leucocephalus*

Element Occurrence Map Label: 11508

Element Subnational ID: 11331

EO Number: 182

Common Name: Bald Eagle

Species of Concern (Y) / Potential Concern (W): Y

First Observation Date:

Description: Vertebrate Animal

Last Observation Date:

### Natural Heritage Ranks:

### Federal Agency Status:

State: S3

U.S. Fish & Wildlife Service: LT, PDL

Global: G5

U.S. Forest Service: THREATENED

U.S. Bureau of Land Management: SPECIAL STATUS

EO Rank:

EO Data





Natural Resource Information System  
Montana State Library  
PO Box 201800  
Helena, MT 59620-1800  
(406) 444-3000 mnhp@state.mt.us

## Species of Concern Data Report

Monday, January 8, 2007

Visit <http://mtnhp.org> for additional information.

### Inferred Extent Report

**Inferred Extents** are areas that can be inferred to be probable occupied habitat based on the spatial location of the direct observation of a species and general information available for the foraging area or home range size of the species.

Inferred Extent For: *Corynorhinus townsendii*

Common Name: Townsend's Big-eared Bat

Inferred Extent Map Label: IE- 17113

---

# Montana Species of Concern Riverview Orchards Block 5

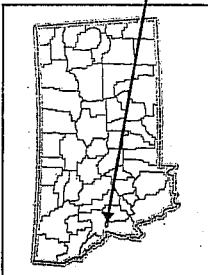
## Species of Concern

- Vascular Plant
- Nonvascular Plant
- Other Botanical
- Vertebrate Animal
- Invertebrate Animal
- Other Zoological
- Animal Informed Extinct
- Ecological Sites

**SPECIES OF CONCERN:** A polygon feature representing only what is known about the species' distribution. The location of the species is not known, but the location of the species is known.

**INFERRED EXTENT:** Areas that can be inferred to be probable occupied habitat based on the spatial location of the direct observation of a species and the range of the species.

**NOTES:** Ecological information that may be useful in assessing biological values and interpreting Species of Concern data.



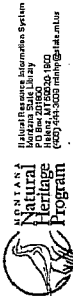
## Land Management

- US Bureau of Land Management
- US Bureau of Reclamation
- US Fish and Wildlife Service
- National Park Service
- US Forest Service
- Other USDA
- Army Corps of Engineers
- Other Department of Defense
- Undifferentiated state
- DNRC (state trust lands)
- Montana Fish, Wildlife & Parks
- University, Institutions, MDT
- DNRC (water project lands)
- Local Government
- Bureau of Indian Affairs Trust
- Tribal Lands
- Plum Creek
- Private Land Trusts

Not all legend items may occur on the map.

Features shown on this map do not imply public access to any lands.

This map displays management status, which may vary from ownership.



Map Document: (K:\Requests\07\mtco07\mtco004\0707us0047.mxd) 1/8/2007



**Shaun Morrell**

## EXHIBIT A-2

**From:** David Ohnstad  
**Sent:** Wednesday, January 03, 2007 10:11 AM  
**To:** Shaun Morrell  
**Subject:** RE: Your feedback on Riverview Orchards (Schultz) subdivision

Why would this project be subject to the old standards?

In any event, we would not recommend approval of the variance; indeed, we would very much oppose it.

David

---

**From:** Shaun Morrell  
**Sent:** Wednesday, January 03, 2007 8:36 AM  
**To:** David Ohnstad  
**Subject:** Your feedback on Riverview Orchards (Schultz) subdivision

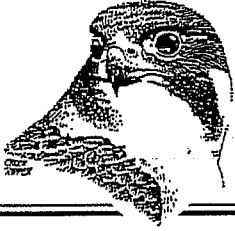
David,

I am writing to call your attention to an agency notification I just put in your mailbox yesterday afternoon. It is for a two-lot subsequent minor subdivision on which they are requesting a variance from road standards (under the old regs, referencing Table 5-4-2).

This variance request applies to Skyview Drive, which is an unpaved private road that abuts eight lots north of Eight Mile Creek Road, providing driveway access to about four or five of those lots. The proposal would add an additional access on the cul-de-sac.

The road is a gravel road and the variance would relieve the applicant from the requirement to pave the road (as this is a subsequent minor, and therefore subject to the paving requirements). What would be your recommendation on this variance?

Shaun Morrell  
Ravalli County Planning Dept.  
215 South 4th Street, Suite F  
Hamilton, MT 59840  
smorrell@ravalliacounty.mt.gov



**F**LORENCE  
**C**ARLTON  
**S**CHOOL

FCS Home Page: [www.florence.k12.mt.us](http://www.florence.k12.mt.us)

RECEIVED

JAN 10 2007  
IC-07-01-29  
Ravalli County Planning Dep.

5602 Old Hwy 93  
Florence MT 59833

JOHN MCGEE  
SUPERINTENDENT  
Ph. (406) 273-6751

REBECCA STAPERT  
PRINCIPAL, GR. 9-12  
Ph. (406) 273-6301

EDWARD NORMAN  
PRINCIPAL, GR. 6-8  
Ph. (406) 273-0587

VANCE VENTRESCA  
PRINCIPAL, GR. K-5  
Ph. (406) 273-6741

CHRISSEY HULLA  
ASST. PRINCIPAL, GR. K-5  
Ph. (406) 273-6741

JULIE LORENSEN  
BUSINESS MANAGER  
Ph. (406) 273-6751

January 9, 2007

## EXHIBIT A-3

Ravalli County Planning Department  
215 South 4<sup>th</sup> Street; Suite F  
Hamilton, MT 59840

Re: Riverview Orchards

Dear Mr. Morrell:

Your letter to the Florence-Carlton School District dated January 2, 2007, requested comments about the Riverview Orchards, Block 5, Lot 1A, AP(Schultz) Subsequent Minor Subdivision with three variances. In anticipation of this and other subdivisions, our district formed a Mitigation Fee Committee. This committee took an in depth look at the impact subdivisions would have on our district. They used information commonly requested by the county commissioners when reviewing subdivisions, and information from an August 8, 2006 Impact Fee Study completed for our district. You will find that the district is requesting a fee of \$10,418 per lot, and will file this request with the Ravalli County Planning Board. We also wish to have it on record that the District will not provide transportation services for any students who do live on county roads.

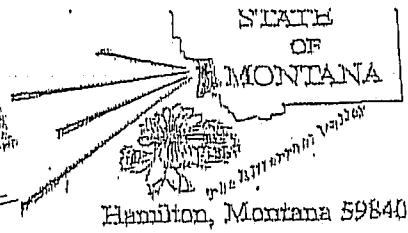
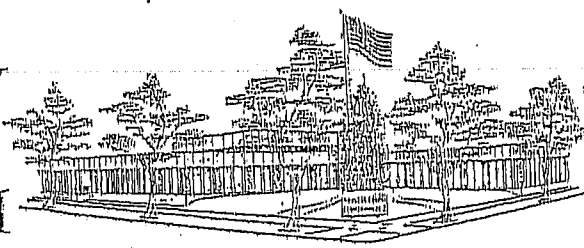
If you have any questions, please do not hesitate to contact me.

Sincerely,

John C. McGee  
Superintendent

# EXHIBIT A-4

COUNTY  
OF  
RAVALLI



JUL-04-06-776

Ravalli Co. Planning Office

RAVALLI COUNTY BOARD OF HEALTH  
215 S. 4<sup>th</sup> Street, Suite A  
Hamilton, MT. 59840

JUN 2 2004

RECEIVED

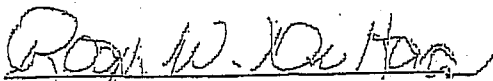
June 23, 2004


Road Standards Committee  
C/O Ravalli County Planning Department


RE: Board of Health's Concerns for Road Standards

The Board of Health met in regular session on this date of June 23, 2004. In a discussion of air quality and roads, the Board of Health unanimously agreed that air quality and road safety are of paramount concern in the development of any road standards.

For the Board of Health:

  
Roger DeHaan, Member

  
Carlotta Grandstaff, Member

  
Commissioner Greg Chilcott, Chairman

## EXHIBIT A-5

Memo to: Ravalli County Commissioners  
From: Ravalli County Health Board  
Re: Proposed new County road regulations  
Date: April 4, 2005

Various research studies show a strong link between air borne dust particulates and human health problems, including emphysema, asthma and others. For further details, please see the article (and 72 referenced articles) from the American Academy of Pediatrics, 2004, "Ambient Air Pollution: Health Hazards to Children."

In Ravalli County, even though there is limited air monitoring we are able to do, it is clear that sometimes we have excessive particulate matter (mainly road dust) in our air. Additionally, citizens often complain to County and State agencies about specific road dust problems in certain areas.

Because of this, the Health Board strongly urges the Commissioners to include mandatory dust control measures in any road regulations for the County.

All new roads, including those in subdivisions, should be paved, or treated with dust suppressant such as magnesium chloride, at the time of construction. If the magnesium chloride option is chosen, which requires reapplication every other year, owners must provide sufficient bonding or financial guarantee to insure that the work will be done for an extended period such as 20 or 30 years.

For existing roads owned by the County, we recommend that the very first budget priority be to apply dust palliative on all roads. This means that ALL County roads should have a graded magnesium chloride surface before any road is given additional budget allocation for widening, paving etc.

We believe that these measures, if implemented, will significantly help the health condition of all citizens of Ravalli County.

Thank you for considering and including these provisions in the new road regulations.

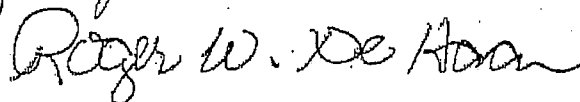
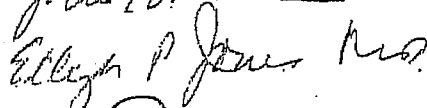
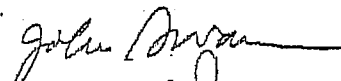
Respectfully submitted by the Ravalli County Health Board:

Mr. Greg Chilcott, Ravalli County Commissioner

Dr. John Swanson, M.D.

Dr. Elyn Jones, M.D.

Mr. Roger W. De Haan, P.E.



# East River Orchard Homeowners Association

P. O. Box 1538 \*\* Lolo Mt 59847  
Ph 406-273-2075 \*\* Fax 406-273-2088

## EXHIBIT A-6

Gordon Sorenson Engineering  
2610 Gunsight Court  
Missoula, Mt 59804

RECEIVED

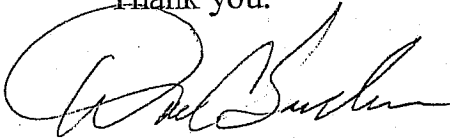
December 18, 2003

DEC 22 2003  
10-03-12-476

Dear Gordon:

I have received your info on the Schultz Subdivision, I see no concerns for the Association on the road maintenance. The only comment I have on the irrigation is: The Association will not be responsible for any extension of water lines off of our underground line to service additional lots. This installation and maintenance will be the responsibility of the property owners, present or future.

Thank you.



Bill Scullion President

Cc: Jessica Hennell, Planner  
Ravalli County Planning  
215 So 4<sup>th</sup> St Suite F  
Hamilton, Mt 59840



Montana Department of  
**ENVIRONMENTAL QUALITY**

RECEIVED  
AUG 28 2006  
16-06-08-1360  
Ravalli County Planning Dept.

Brian Schweitzer, Governor

P.O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • www.deq.mt.gov  
August 25, 2006

Gordon E. Sorenson  
Gordon Sorenson Engineering  
2610 Gunsight Court  
Missoula MT 59804

## EXHIBIT A-7

RE: Riverview Orchards, Blk 5 Lot 1-A, AP  
Ravalli County  
E.Q. #04-2557

Dear Mr Sorenson:

The plans and supplemental information relating to the water supply, sewage, solid waste disposal, and storm drainage (if any) for the above referenced division of land have been reviewed as required by ARM Title 17 Chapter 36(101-805) and have been found to be in compliance with those rules.

Two copies of the Certificate of Subdivision Plat Approval are enclosed. The original is to be filed at the office of the county clerk and recorder. The duplicate is for your personal records.

Development of the approved subdivision may require coverage under the Department's General Permit for Storm Water Discharges Associated with Construction Activity, if your development has construction-related disturbance of one or more acre. If so, please contact the Storm Water Program at (406) 444-3080 for more information or visit the Department's storm water construction website at <http://www.deq.state.mt.us/wqinfo/MPDES/StormwaterConstruction.asp>. Failure to obtain this permit (if required) prior to development can result in significant penalties.

Your copy is to inform you of the conditions of the approval. Please note that you have specific responsibilities according to the plat approval statement primarily with regard to informing any new owner as to any conditions that have been imposed.

If you wish to challenge the conditions of this Certificate of Subdivision Plat Approval, you may request a hearing before the Board of Environmental Review or the Department, pursuant to Section 76-4-126, MCA and the Montana Administrative Procedures Act.

If you have any questions, please contact this office.

Sincerely,

for Steve Kilbreath, Supervisor  
Subdivision Review Section

SK/ML

cc: County Sanitarian  
County Planning Board ✓



**STATE OF MONTANA**  
**DEPARTMENT OF ENVIRONMENTAL QUALITY**  
**CERTIFICATE OF SUBDIVISION APPROVAL**  
(Section 76-4-101 et. seq., MCA)

TO: County Clerk and Recorder  
Ravalli County  
Hamilton, Montana

E.Q. # 04-2557

THIS IS TO CERTIFY THAT the plans and supplemental information relating to the subdivision known as Riverview Orchards, Block 5, Lot 1-A, AP

For Legal Description, See Attached "Exhibit A"

consisting of 2 Lots have been reviewed by personnel of the Permitting and Compliance Division, and,

THAT the documents and data required by ARM Chapter 17 Section 36 have been submitted and found to be in compliance therewith, and,

THAT the approval of the Plat is made with the understanding that the following conditions shall be met:

THAT the Lot sizes as indicated on the Plat to be filed with the county clerk and recorder will not be further altered without approval, and,

THAT each Lot shall be used for one single-family dwelling, and,

THAT each water system Lots 1-A1 and 1-A2 will consist of a well drilled to a minimum depth of 25 feet constructed in accordance with the criteria established in Title 17, Chapter 36, Sub-Chapters 1, 3, and 6 ARM and the most current standards of the Department of Environmental Quality, and,

THAT data provided indicates an acceptable water source at a depth of approximately 100 feet, and,

THAT each individual sewage treatment system for Lots 1-A1 and 1-A2 will consist of a septic tank with effluent filter, and subsurface drainfield of such size and description as will comply with Title 17, Chapter 36, Sub-Chapters 1, 3, and 6 ARM, and,

THAT the subsurface drainfield on Lots 1-A1 and 1-A2 shall have an absorption area of sufficient size to provide a maximum application rate of 0.5 gallons per day per square foot, and,

THAT the bottom of the drainfield shall be at least four feet above the water table, and,

THAT no sewage treatment system shall be constructed within 100 feet of the maximum highwater level of a 100 year flood of any stream, lake, watercourse, or irrigation ditch, nor within 100 feet of

any water supply source, and,

THAT water supply systems, sewage treatment systems and storm drainage systems will be located as shown on the approved plans, and,

THAT the water supply, wastewater treatment and storm drainage system must be located as shown on the attached lot layout, and,

THAT the developer and/or owner of record shall provide each purchaser of property with a copy of the Plat, approved location of water supply and sewage treatment system as shown on the attached lot layout, and a copy of this document, and,

THAT instruments of transfer for this property shall contain reference to these conditions, and,

THAT plans and specifications for any proposed sewage treatment systems will be reviewed and approved by the county health department and will comply with local regulations and ARM, Title 17, Chapter 36, Subchapters 3 and 9, before construction is started.

THAT departure from any criteria set forth in the approved plans and specifications and Title 17, Chapter 36, Sub-Chapters 1, 3, and 6 ARM when erecting a structure and appurtenant facilities in said subdivision without Department approval, is grounds for injunction by the Department of Environmental Quality.

THAT this Approval Statement supercedes prior Approval Statement E.Q. #03-1731 dated October 25, 2002, for Lot 1- A only, and that it supercedes the prior Approval Statement dated 29 November 2004.

Pursuant to Section 76-4-122 (2)(a), MCA, a person must obtain the approval of both the State under Title 76, Chapter 4, MCA, and local board of health under section 50-2-116(1)(i), before filing a subdivision plat with the county clerk and recorder.

YOU ARE REQUESTED to record this certificate by attaching it to the Plat filed in your office as required by law.

DATED this 18th day of August 18, 2006.

RAVALLI COUNTY HEALTH OFFICER

By: Morgan T. Farrell  
Morgan T. Farrell, R. S.  
Ravalli County Environmental Health  
215 South 4<sup>th</sup> - Suite D  
Hamilton, MT 59840

RICHARD OPPER  
DIRECTOR

By: Barbara Kingery for  
Steve Kilbreath, Supervisor  
Public Water and Subdivision Bureau  
Permitting and Compliance Division  
Department of Environmental Quality

Owner's Name: Kevin Schultz, President

*EXHIBIT "A"*

A TRACT OF LAND LOCATED IN PORTIONS OF THE SE 1/4 SE 1/4 OF SECTION 5, NE 1/4 NE 1/4 OF SECTION 8, AND NW 1/4 NW 1/4 OF SECTION 9, T.10 N., R.19 W., PRINCIPAL MERIDIAN, RAVALLI COUNTY, MONTANA; MORE PARTICULARLY DESCRIBED AS FOLLOWS:

LOT 1-A, BLOCK 5, OF RIVERVIEW ORCHARDS AMENDED PLAT NO. 523720, A RECORDED SUBDIVISION OF RAVALLI COUNTY, MONTANA; CONTAINING 9.04 ACRES, MORE OR LESS, BEING SURVEYED AND MONUMENTED IN ACCORDANCE WITH THIS PLAT; SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD AND/OR APPARENT.

**RECEIVED**

**AUG 23 2006**

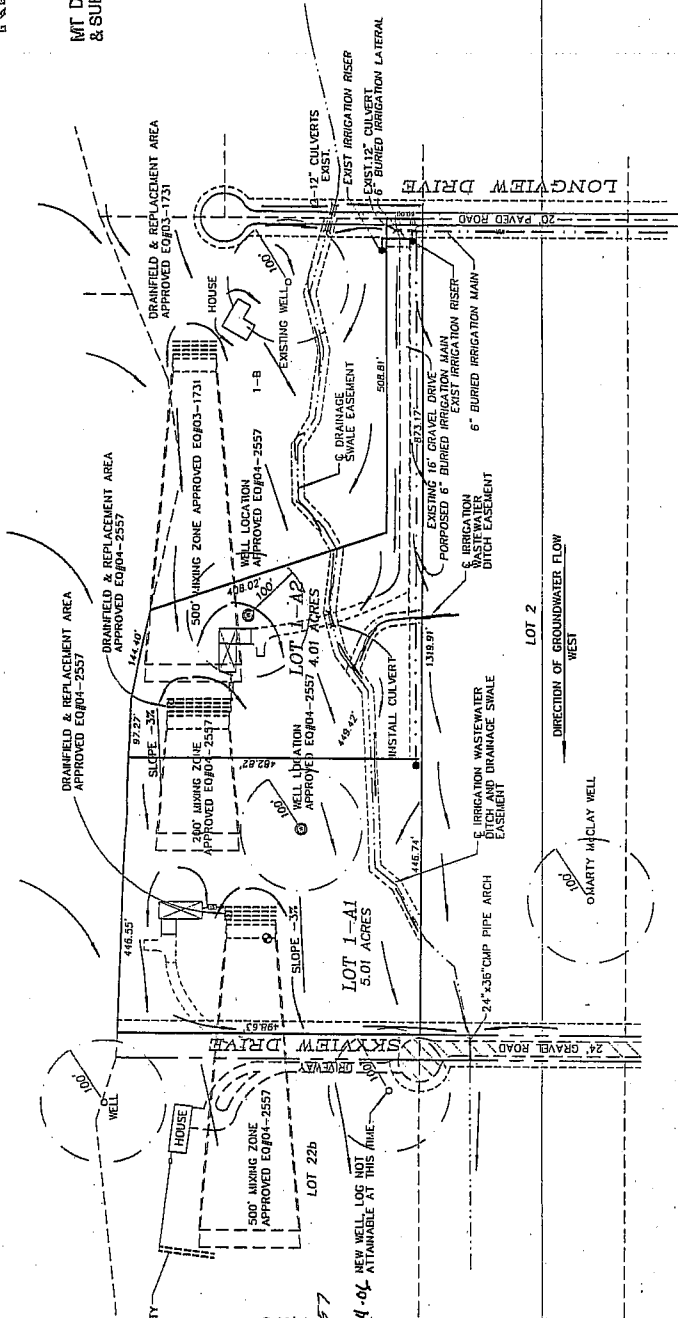
**MT DEQ PUBLIC WATER  
& SUBDIVISIONS BUREAU**

10/11/2006

RECEIVED

AUG 23 2005

MT DEQ PUBLIC WATER  
& SUBDIVISIONS BUREAU



EXISTING DRAINFIELD PER RAVALL COUNTY  
HEALTH DEPARTMENT PERMIT N03019

Reviewed by the Local Reviewing Authority:

Under contract with the

Department of Environmental Quality/PCD

*Barbara Kinyard* 8-24-04

Local Reviewer

Date

Accepted under contract

Barbara Kinyard 8-24-04

DEQ Representative

LEGEND

SOILS TEST HOLE

PERCOLATION TEST

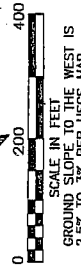
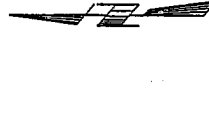
PROPOSED WELL

PROPOSED SEPTIC TANK

PROPOSED RESIDENCE (APPROXIMATE)

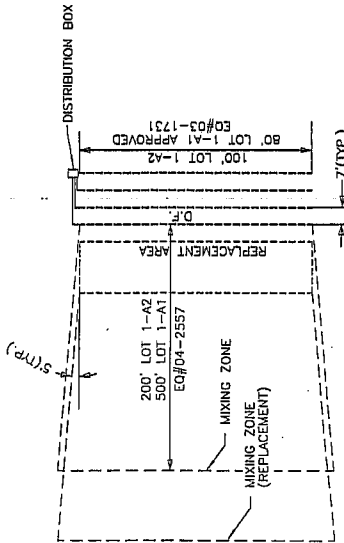
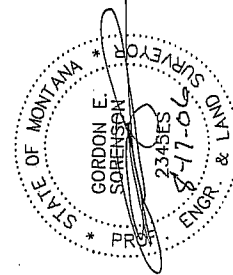
BURIED IRRIGATION MAINS

DRAINAGE PATTERN



SURVEY PERFORMED FOR:  
KEVIN SCHULTZ

SURVEY PERFORMED BY:  
GORDON SORENSON ENGINEERING  
2610 GUNSLIGHT COURT  
MISSOULA, MT 59804  
TEL: 406-328-8888  
FILED: 1200-1005-101002-010024P45.FLX



FOR 4 BEDROOM RESIDENCE

DRAINFIELD LAYOUT

NOT TO SCALE

REVISED OCTOBER 11, 2005  
DATE: MARCH 31, 2004

## SUBDIVISION APPLICATION PACKET CHECKLIST - Water and Sanitation Information Per MCA 76-3-622

Name of Subdivision: *RIVERVIEW ORCHARDS, BLK 5, TRACT A-1, PT*Subdivider/Landowner Name(s): *KEVIN SCHULTZ*Consultant Name: *GORDON SORENSON***EXHIBIT A-8**Date Received: *4-22-04*

Sufficiency Review Due Date:

Yes	No	N/A	Item	Additional Information/Staff comments
-----	----	-----	------	---------------------------------------

(1) Unless the land division is excluded from review under 76-4-125(2), the subdivider shall submit to the information listed below for proposed subdivisions that will include new water supply or wastewater facilities.

<input checked="" type="checkbox"/>			Provide two copies of the following information with a check paid to RCEHD for their \$50.00 sufficiency review fee.	
<input checked="" type="checkbox"/>			<u>(a) Vicinity Map or Plan</u>	
<input checked="" type="checkbox"/>			(i) The location, within 100 feet outside of the exterior property line of the subdivision and on the proposed lots, of:	
<input checked="" type="checkbox"/>			(A) flood plains	
<input checked="" type="checkbox"/>			(B) surface water features	
<input checked="" type="checkbox"/>			(C) springs	
<input checked="" type="checkbox"/>			(D) irrigation ditches	
<input checked="" type="checkbox"/>			(E) existing, previously approved, and, for parcels less than 20 acres, proposed water wells and wastewater treatment systems	
<input checked="" type="checkbox"/>			(F) for parcels less than 20 acres, mixing zones identified as provided in subsection (1)(g);	
<input checked="" type="checkbox"/>			(G) the representative drainfield site used for the soil profile description as required under subsection (1)(d)	
<input checked="" type="checkbox"/>			(ii) The location, within 500 feet outside of the exterior property line of the subdivision, of public water and sewer facilities	
<input checked="" type="checkbox"/>			(b) A description of the proposed subdivision's water supply systems, storm water systems, solid waste disposal systems, and wastewater treatment systems, including whether the water supply and wastewater treatment systems are individual, shared, multiple user, or public as those systems are defined in rules published by DEQ.	
<input checked="" type="checkbox"/>			(c) A drawing of the conceptual lot layout at a scale no smaller than 1" = 200' that shows all information required for a lot layout document in rules adopted by the DEQ pursuant to 76-4-104.	

*M. J. Jansle*

Yes	No	N/A	Item	Additional Information/Staff comments
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(d) Evidence of suitability for new onsite wastewater treatment systems that, at a minimum, includes:	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(i) A soil profile description from a representative drainfield site identified on the vicinity map, as provided in subsection (1)(a)(i)(G), that complies with standards published by DEQ.	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(ii) Demonstration that the soil profile contains a minimum of 4 feet of vertical separation distance between the bottom of the permeable surface of the proposed wastewater treatment system and a limiting layer.	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(iii) In cases in which the soil profile or other information indicates that ground water is within 7 feet of the natural ground surface, evidence that the ground water will not exceed the minimum vertical separation distance provided in subsection (1)(d)(ii);	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(e) For new water supply systems, unless cisterns are proposed, evidence of adequate water availability:	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(i) obtained from well logs or testing of onsite or nearby wells;	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(ii) obtained from information contained in published hydrogeological reports; <u>OR</u>	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(iii) as otherwise specified by rules adopted by DEQ pursuant to 76-4-104;	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(f) Evidence of sufficient water quality in accordance with rules adopted by DEQ pursuant to 76-4-104;	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(g) A preliminary analysis of potential impacts to ground water quality from new wastewater treatment systems, using as guidance rules adopted by the board of environmental review pursuant to 75-5-301 and 75-5-303 related to standard mixing zones for ground water, source specific mixing zones, and nonsignificant changes in water quality.	The preliminary analysis may be based on currently available information and must consider the effects of overlapping mixing zones from proposed and existing wastewater treatment systems within and directly adjacent to the subdivision. Instead of performing the preliminary analysis required under this subsection (1)(g), the subdivider may perform a complete nondegradation analysis in the same manner as is required for an application that is reviewed under Title 76, chapter 4.

Book 151 Page 311

ATTACHMENT A

DECLARATION OF PROTECTIVE RESTRICTIONS,  
COVENANTS AND CONDITIONSRECORDED  
INDEXED

THIS DECLARATION, made this 4TH day of DECEMBER, 1978, by E.M. SMALL, R.H. SMALL, ROBERT GREENE, & SKIP BUCK, hereinafter called Declarants:

## W I T N E S S E T H:

WHEREAS, Declarants are the owners of all of the real property, as described in Exhibit "A" hereto attached, and desire to place restrictions, covenants and conditions upon a portion of said real property for the use and benefit of themselves as present owners and for the future owners thereof;

WHEREAS, the following restrictions, covenants and conditions shall only be placed on said premises and the owners and contract purchasers shall be charged with the following restrictions, covenants and conditions; and

WHEREAS, the said real property described shall be known as RIVERVIEW ORCHARDS

NOW, THEREFORE, Declarants hereby make the following declarations as to limitations, uses and restrictions to which the specifically above-named tracts or any part thereof constituting said real property may be put, hereby specifying that such declarations shall constitute covenants to run with the land specified herein and shall be binding on all parties and persons claiming under them, for the benefit of and limitations on all future owners in said RIVERVIEW ORCHARDS, and shall inure to the benefit of and be binding upon each successor in interest of the owners thereof, and further declare that all the specified property above described shall be held, used, sold and conveyed subject to the following restrictions, covenants, conditions and easements for the purpose of insuring the use of the property for residential and agricultural purposes only, to enhance and protect the value of the real property as a highly desirable rural subdivision, to prevent nuisances, to prevent the impairment of the attractiveness of the property, and to maintain the desired tone of the subdivision, thereby securing to each site owner the full benefit and enjoyment of his home.

ARTICLE I: DEFINITIONS

Section 1. "Association" shall mean and refer to RIVERVIEW ORCHARDS HOMEOWNERS ASSOCIATION, a proposed Montana non-profit corporation, its successors and assigns.

Section 2. "Properties" shall mean and refer to that certain real property hereinbefore described namely, RIVERVIEW ORCHARDS, of Certificate of Survey No. \_\_\_\_\_ and such other real property as is now or may hereafter be brought within the jurisdiction of the Association.

Section 3. "Lot" shall mean and refer to any tract of land specified herein as subject to this Declaration and as shown upon any recorded certificate of survey of the properties with the exception of any dedicated street, road easements, irrigation easements, drainage easements, public utility easements, and the specific lots exempted from this Declaration. In the event a lot is subdivided or other than a tract as shown on the recorded certificate of survey is used as a dwelling location, as hereinafter authorized, such location, as modified, shall thereafter be considered as a Lot.

Section 4. "Member" shall mean and refer to every person or entity who is a member of the Association.

Section 5. "Owner" shall mean and refer to every person or entity who is the owner of a fee or of the equitable title, one purchasing under a contract for deed, of any Lot which is a part of the Properties, including buyers under a contract for deed, excluding those having such interest merely as security for the performance of an obligation.

Section 6. "Common Area" shall mean and refer to all real property owned by the Association for the common use and enjoyment of the Members of the Association.

Section 7. "Declarants" shall mean and refer to E.M. SMALL, R.M. SMALL, ROBERT GREENE & SKIP BLICK their heirs, successors or assigns, if such heirs, successors or assigns should acquire the entire interest of said properties.

Section 8. "Class A" Members shall be all Members of the Association except the Declarants.

Section 9. "Class B" Members of the Association shall be the Declarants.

Section 10. "Dwelling House" shall mean and include double wide mobile home, modular home, constructed home and pre-engineered home.

#### ARTICLE II: ANNEXATION

The association may, at any time, annex additional residential properties that border property within the jurisdiction of the Association, and so add to its membership; provided, that such annexation shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly and properly called for the purpose and the assent of the owner of the bordering property.



ARTICLE III: MEMBERSHIP

Every person or entity who is the owner of a fee or the equitable title, when purchasing under a contract for deed, of a lot which is subject by covenants of record to assessment by the association, including buyers under a contract for deed and contract sellers, shall be a Member of the Association. For the purpose of determining membership, such ownership shall be deemed to have vested upon the recording of a duly executed deed or a notice of purchaser's interest to the grantee or vendee with the clerk and recorder of Ravalli County, Montana. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of the lot which is subject to assessment by the Association. Ownership of such lot shall be the sole qualification for membership.

ARTICLE IV: VOTING

Section 1. Class A. Class A Members shall be entitled to one (1) vote for each lot in which they hold the interest required for membership. When more than one person holds such interest in any lot, the vote for such lot shall be exercised as such persons among themselves determine, but in no event shall more than one Class A vote be cast with respect to any lot.

Section 2. Class B. Class B Members shall be entitled to one (1) vote for each lot which they hold the interest required for membership, but in no event shall more than one Class B vote be cast with respect to any lot.

Section 3. When such distinction of classes shall terminate all members shall be entitled to one (1) vote for each lot in which they hold the interest required for membership of the Association. When more than one person holds such interest in any lot, the vote for such lot shall be exercised as such persons among themselves determine, but in no event shall more than one (1) vote be cast with respect to any lot.

Section 4. Suspension of voting rights. The voting rights of any Member shall be suspended by action of the Board of Directors of said Association if such Member shall have failed to pay when due any assessment or charge lawfully imposed upon him or any lot owned by him, or if the Member, his family, or any guest of any thereof, shall have violated any rule or regulation of the Association regarding the use of any property or conduct with respect thereto.

#### ARTICLE V: PURPOSES

The Association shall represent the Owners and serve them in accordance with the provisions of this Declaration.

Its services may include, but shall not be limited to architectural control, maintenance of roads within the Properties and providing such other services and representation as are authorized in accordance with the provisions of this Declaration.

#### ARTICLE VI: ASSESSMENTS

Section 1. Assessment Obligation. The Declarants for each Lot owned within the Properties covenant to, and each other Owner of any Lot by acceptance of a deed or contract for deed of any Lot within the Properties, whether or not it shall be so expressed in said deed or contract, is deemed to covenant and agree to, and shall be a member of, and subject to the assessments and duly enacted By-Laws and all other rules of the Association. The assessments in this regard shall be paid promptly when the same becomes due, as hereinafter provided, and in the event of Declarants' or Owner's failure to pay the same promptly when due shall constitute a lien upon the above described premises and the same may be enforced in equity as in the case of any lien foreclosure. The Board of Directors of the Association may duly record said lien upon and against any such lot, and such recording thereof shall constitute notice of said lien to all persons, including successors in title, who shall take said lot subject to that recorded lien. In this regard, Declarants shall not be liable or charged with any assessment allowed herein subject to the conveyance of all lots herein by contract for deed to Class B Members.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in the Properties and in particular for the improvement and maintenance of the Properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area, and of the homes situated upon the Properties.

Section 3. Rate of Assessments. Both annual and special assessments must be fixed at a uniform rate per Lot except as otherwise provided herein. However, all undeveloped lots owned by the Declarants or Class B Members shall be subject to assessments of one-fourth (1/4) of the amount of the fixed assessment, whether annual or special.

Section 4. Annual Assessments. Assessments shall be fixed annually by the Board of Directors of the Association. Until January 1, 1990, the maximum monthly rate shall be FIVE DOLLARS (\$5.00) per lot.

(a) From and after January 1, 1990, the maximum annual assessment may be increased effective January 1st of each year in proportion to the annual rise, if any, in the Consumer's Price Index as published for the preceding month of July by the United States Department of Labor.

(b) From and after January 1, 1990, the maximum annual assessment may be increased above that established by the Consumer's Price Index formula or decreased to a different basis (subject to subsequent adjustment by the Consumer's Price Index formula) provided that any such change shall have the assent of two-thirds (2/3) of each class of Members who are voting in person or by proxy at a meeting duly and properly called for this purpose. These limitations shall not apply to any change in the assessments incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation; nor shall these limitations apply to any special assessments as hereinafter mentioned.

(c) After consideration of current maintenance costs and future needs of the Association, the Board of Directors may fix the annual assessments at an amount not in excess of the maximum allowable.

Section 5. Road Maintenance Assessments. The Association shall levy a special assessment for the purpose of paying for road maintenance costs. This Assessment shall be levied at a uniform rate for all Lots.

Section 6. Special Assessments for Capital Expenditures. The Association may levy a special assessment applicable to one year only for the purpose of defraying, in full or in part, the cost of any purchases, construction or reconstruction, or unexpected repair or replacement of capital items, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the vote of each class of Members who are voting in person or by proxy at a meeting duly and properly called for this purpose.

Section 7. Assessment procedures. The Board of Directors of the Association is authorized to make the initial assessments at such time as it determines appropriate. Such Board shall fix the amount of assessments against each Lot and send written notices to every Owner at least thirty (30) days in advance of the due date. The payment of assessment installments shall be made at such intervals as are established by the Board of Directors. The Association shall upon demand at any time furnish a certificate in writing signed by any authorized officer of the Association setting forth whether the assessments on a specified Lot have been paid. A reasonable charge may be made by the board for issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8. Non-Payment of Assessment. Any assessments or installment payments or assessments which are not paid when due shall be delinquent. If not paid within thirty (30) days after the due date, the amount shall bear interest from the date of delinquency until paid at the rate of eight percent (8%) per annum. The Association may bring an action at law or in equity to collect the amount of the assessment, by a personal action against the delinquent owner and by foreclosure of the lien against said Lot, together with interest, costs and reasonable attorney's fees for such action. The Board may also suspend all voting rights as hereinabove mentioned.

Section 9. Exempt Property. The following property subject to this declaration shall be exempt from the assessments created herein.

- (a) All properties dedicated to and accepted by public authority or agencies;
- (b) All properties owned by the Association, including the said Common Area; and
- (c) All properties owned by charitable organizations exempt from taxation by the laws of the State of Montana.

However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

ARTICLE VII: PROTECTIVE COVENANTS

The following protective covenants are designed to provide a uniform plan for the development of the properties. They shall constitute a covenant running with the land for all time within the Properties.

Section 1. All Lots in the above-described property shall be used for residential purposes only, to include duplexes, except as hereinafter provided. No business, trade, manufacture or other commercial activity shall be conducted thereon. No Lot shall be divided in such a manner as to leave any parcel of less than two (2) acres, subject to the control of the Architectural Control Committee with regard to the manner, occasion and shape of said division as hereinafter set forth, provided, however, the Declarants or Class A Members may, for financing purposes only, execute a conveyance of any portion of any Lot for less than two (2) acres in site and the Architectural Control Committee may, because of topography and access, waive the two acre minimum.

Section 2. No building shall be erected, altered, placed or permitted to remain on any Lot other than a single family dwelling or duplex, private garage, greenhouse and a barn. The Architectural Control Committee is authorized in its absolute discretion to approve exceptions to this section so a guest house or other reasonable outbuildings may be constructed to serve the residents of the principal dwelling house. All such dwelling houses, buildings or structures shall be completed as to external appearance within six (6) months of commencement of construction. No structure other than a fully completed residence shall be occupied. No outbuilding, garage, shed, tent, camping trailer, basement or temporary building shall be used for permanent or temporary residence purposes.

Section 3. The ground floor area of the main dwelling house shall not be less than Eight Hundred (800) square feet per floor for a two story house and One Thousand (1,000) square feet for a one story house, exclusive of garage, covered walks and open porches. All buildings must have either a full basement or a double-car garage of at least 20' x 24'.

Section 4. No building shall be located on any Lot closer than seventy-five (75) feet to any street or roadway easement nor closer than fifteen (15) feet to any property line. The Architectural Control Committee shall have exclusive control and approve all building sites as hereinafter provided and the right to grant, in its sole discretion, a variance to the fifteen (15) foot setback when necessary.

Section 5. No dwelling house, garage, fence, enclosure or other structure shall be erected, placed or altered on any Lot until the construction plans and specifications and proposed building site therefor have been approved by the Architectural Control Committee as to materials, size, harmony of external design with existing structures in the surrounding area, access, location of the structure with respect to topography and the finished grade elevation and health and sanitation requirements and restrictions. No Lot shall be divided as hereinbefore mentioned until the survey of the proposed division has been approved by the Architectural Control Committee as to location, harmony of existing land ownership in the surrounding area, relationship to the topograph, access, population density and health and sanitation requirements and restrictions. Said committee shall consist of the Board of Directors of the Association. Approval or disapproval by the Architectural Control Committee shall be in writing. In the event the Committee fails to act within thirty (30) days after the proposed plans and specifications of any structure, proposed building site and survey of any proposed Lot division are submitted, no specific approval shall be required for said structure, proposed building site, or proposed Lot division and pertinent provisions of this Declaration shall be deemed to have been fully complied with. If no suit is commenced to enjoin construction or placement of a dwelling house prior to its completion or within thirty (30) days of the time construction is commenced or placement occurs, whichever is longer, said dwelling house and said building site shall thereafter be deemed in compliance with this Declaration; and if no suit is commenced to enjoin any division of a Lot within sixty (60) days after said survey of such a division is duly recorded, said Lot division shall thereafter be deemed to be in compliance with this Declaration.

Section 6. No advertising signs (except a small "For Sale" sign) bill boards, or unsightly objects shall be erected, placed or permitted to remain on any Lot. Until December 31, 1982, Declarants or Class B Members may place reasonable signs within the property to promote its development..

Section 7. Each property Owner shall provide exterior maintenance. The premises, improvements and appurtenances shall be maintained in a safe, clean, neat and orderly condition. No rubbish or other waste shall be allowed to accumulate on the property. All containers for the storage and disposal of garbage shall be kept in a clean and orderly condition. No refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon.

Section 8. Only normal family pets, 4-H project animals and cattle, horses and poultry may be kept on the premises. No swine or goats shall be kept on any portion of said premises. No large scale agricultural operations such as feed lots, dairy herds or poultry farms shall be allowed to operate on the premises. Such animals, as allowed, shall be confined within the property of their owner and shall not be permitted to become a nuisance or annoyance to neighbors.

Section 9. The premise shall not be utilized for communal living and no noxious or offensive activities shall be carried on or permitted on any Lot; nor shall the property be used in any way which may endanger the health or safety of, or unreasonably disturb the neighborhood.

Section 10. All water systems and sewage disposal systems must be located and constructed in accordance with the requirements, standards and recommendations of the appropriate state and county governmental authorities.

Section 11. No trucks exceed One Ton capacity or other unsightly vehicles shall be parked or allowed to remain in said Properties unless stored in a garage or completely screened from view by screening as is approved by the Architectural Control Committee.

Section 12. Certain access routes and road within the Properties have been established by easement and are not dedicated. Also certain easements for public utilities have been established. No fence or other obstruction shall be built upon any easement thereon.

Section 13. Roads shall be dust oiled as and when required by local sanitary regulations.

Section 14.

Section 15. The Declarants have caused survey monuments to be placed on the corners of each Lot. It shall be the responsibility of the Owner of each Lot to provide for the immediate professional replacement of any survey monument that is removed or becomes lost or obliterated from his Lot.

Section 16. No wild bird or animal shall be trapped, hunted or killed within the Properties, excepting for the protection of life, limb or to prevent unreasonable property damage.

Section 17. There shall be no fires started on any Lot without adequate on-site supervision necessary to protect the other Lots. All burning shall be done according to the regulations promulgated by the Association. Any Owner who fails to control any fire he has started which damages another's property shall be liable for all damage caused by said fire.

Section 18. All outdoor yard lights, including mercury vapor lights, shall be limited to one per Lot and no such light shall be erected, placed or altered until its location has been approved by the Architectural Control Committee.

Section 19. All irrigation on the Properties shall be accomplished by use of sprinkling systems which comply with all governing laws and regulations relating to water supply, sanitation and sewage disposal.

Section 20. All access driveways from the private developed roads within the Properties to the dwelling site shall be gravelled with a minimum width of ten (10) feet.

Section 21. Pre-engineered homes and all modular homes placed and erected on a Lot within the Properties shall be placed and erected upon a concrete foundation, as approved by the Architectural Control Committee. All homes must conform to F.H.A. minimum building specifications or with the approval of the Architectural Control Committee. All building will conform to the protective covenants. Mobile homes will not be allowed.

#### ARTICLE VIII: ENFORCEMENT

These covenants may be enforced by the Declarants, the Association or any Owner of real property in the subdivision, by an appropriate proceeding at law or in equity, and may include proceedings to enjoin the violation and recover damages. Invalidity of any one of the restrictions shall in no way affect other provisions which shall remain in full force and effect. Failure to enforce any provisions shall not be deemed a waiver of the right to do so thereafter.

#### ARTICLE IX: TERM

The covenants shall be binding until January 1, 1998, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by the Owners of a majority of the Lots in the subdivision has been recorded agreeing to change the covenants in whole or in part.



ARTICLE X: AMENDMENT

These covenants may be amended by an instrument signed by the Owners of two-thirds (2/3) of the Lots in the subdivision which has been recorded, agreeing to such amendment.

IN WITNESS WHEREOF, the Declarants have executed this instrument this 5TH day of JANUARY, 1975.

Edward M. Small

D. M. Small

John B. Bue

STATE OF MONTANA, )  
                                  ss.  
County of Missoula. )

On this 17 day of March, 1975, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Edward M. Small, D. M. Small, and John B. Bue

all known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same as the Declarants.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and the year first above written.

John B. Bue  
Notary Public for the State of  
Montana, residing at: Missoula  
My commission expires: March 17, 1977

## EXHIBIT "A"

BLOCK 2, Lots 3a, 3b, 4a, 4b, 29a, 29b, 31a, 31b 32a, 32b, 33a, 33b.

BLOCK 3, Lots 1, 3a, 3b, 4a, 4b, 5a, 5b, 6a, 6b, 7a, 7b, 9a, 9b, 10a, 10b, 11a, 11b, 12a, 12b, 13a, 13b, 14a, 14b, 15a, 16a, 16b, 18a, 18b, 19a, 19b, 20a, 20b, 21a, 21b, 22a, 22b, 23a, 23b, 24a, 24b, 25a, 25b, 26a, 26b, 27a, 27b, 28a, 28b, 29a, 29b.

BLOCK 4, Lots 1a, 1b, 2a, 2b, 3a, 3b, 4a, 4b, 5a, 5b, 19a, 19b, 20a, 20b, 22a, 22b.

All of the above according to the Amended Subdivision Plat of Riverview Orchards. A recorded subdivision in Ravalli County, and being in the S½ of Sec. 5, the S½ of Sec. 6, Sec. 7, and the N½ & SW¼ of Sec. 8, T.10N. R.19W, P.M., Montana

State of Montana, County of Ravalli:

Recorded April 20, 1979, 10:45, Block H. M., Book 151 Page 311

Barbara E. Hughes Deputy

Fee \$ 2400 Robert W. Schene

3207 Breaks

Missoula, Mt. 59801